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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1959

No. 457

NATHANIEL CASTIEL,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

On Petition for Writs of Certiorari to the Supreme Court of the State of California.

BRIEF FOR RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

Petitioner seeks to review the denial of a petition for writ of mandate by the District Court of Appeal of the State of California, First Appellate District. That Court denied the petition without opinion on May 14, 1959. Petitioner sought to review the District Court's denial by petition for hearing in the Supreme Court. The petition for hearing was denied by the California Supreme Court on June 9, 1959.

The District Court of Appeal denied a petition for writ of prohibition on January 28, 1959 (1 Civil No. 18,596). A petition for hearing by the California Supreme Court was denied on February 25, 1959.

Earlier petitioner sought a writ of mandate. The District Court of Appeal rendered a decision reported as *Castiel v. Superior Court*, 162 Cal.App.2d 710. Prior to this the District Court of Appeal had reversed a judgment of conviction against Castiel. That decision was reported as *People v. Castiel*, 153 Cal.App.2d 653.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. 1257(3).

QUESTIONS PRESENTED.

Does the denial by a state Appellate Court of a petition for a writ of mandate on the ground that the petition involved the same questions as a prior petition involve any federal question?

Have due process requirements been met when the prosecution, prior to the trial, has given the defendant all information in its possession concerning the identity and whereabouts of an informant?

Did the prosecution's reliance on the pre-existing status of state law concerning *pretrial* identification of an informer involve a due process question?

STATEMENT.

Nathaniel Castiel was convicted on five counts, one of conspiracy, two counts of sale of narcotics and two counts of transportation of narcotics. On appeal the District Court of Appeal of the first district reversed the judgments on the ground that the trial Court erroneously sustained objections to questions concerning the identity of the informer. *Peo. v. Castiel,* 153 Cal.App.2d 653.

After the case was remanded to the trial Court for retrial Castiel moved that the trial Court require the prosecution to reveal the identity and whereabouts of the informer. This motion was made before the commencement of the trial. The trial Court denied the motion. At this time the prosecutor stated that he would produce the informant at the trial. This statement was made on the assumption that the matter would proceed as a "speedy trial". This statement was based on the fact that the informer was incarcerated in the county jail. The prosecutor then had the ability to comply with the assertion made at that time. However, due to the delays involved in the mandate proceedings the informer was released in due course from the county jail. (These facts were presented to the Court in the prior petition for writ of prohibition.)

Castiel sought and obtained a writ of mandate in the District Court of Appeal requiring the trial Court to grant the motion. See *Castiel v. Superior Court,* 162 Cal.App.2d 710. That decision required *pretrial*

disclosures of the informer's identity under the circumstances of this particular case.

Thereafter the trial Court compelled the prosecutor to reveal the name and address of the informant. It appears to be admitted here, as it was in the earlier petition for writ of prohibition filed in the California District Court of Appeal, that the prosecution revealed *all* information that it had concerning the identity and whereabouts of the informer.

Thereafter petitioner filed in the District Court of Appeal a petition for writ of prohibition, which action was numbered 1 Civil No. 18,596 in the files of the District Court of Appeal. That petition was denied on January 28, 1959, without opinion. A hearing was denied by the California Supreme Court on February 25, 1959. The questions raised in the present petition, filed in the Court below which denial petitioner seeks to review, were raised in this prior petition for prohibition. Castiel did not seek review in this Court of the denial of that petition.

Petitioner then filed the present petition for writ of mandate which was denied without opinion by the District Court of Appeal on May 14, 1959. The California Supreme Court denied Castiel's petition for hearing on June 9, 1959.

Petitioner's contentions in the present petition for mandate are the same as those in the earlier petition for prohibition. Petitioner asserts that the prosecution is required by due process to do more than give a defendant all of his information concerning the identity and whereabouts of the informer prior to

trial. He contends that the prosecution should actively engage in the search for the informer and to locate the informer for the defendant.

Likewise, this petition, as the earlier petition, contends that the prosecutor denied petitioner due process by seeking to obstruct the defense by refusing to reveal the identity and whereabouts of the informant.

ARGUMENT.

I.

THE DISTRICT COURT OF APPEAL PROPERLY EXERCISED ITS DISCRETION IN DENYING THE PETITION FOR WRIT OF MANDATE. IT WAS PROPERLY DENIED AS A SUCCESSIVE PETITION RAISING MATTERS IDENTICAL TO MATTERS RAISED IN EARLIER PETITIONS.

The District Court of Appeal's denial of the petition for writ of mandate which Castiel seeks to review by this petition was based on adequate state grounds. The questions raised by the petition for writ of mandate, 1 Civil No. 18,755, were identical to the questions raised in the petition for prohibition, 1 Civil No. 18,596. The fact that he may or may not have mistitled the remedy is of no consequence. See, *Powell v. Superior Court*, 48 Cal.2d 704. However, the issuance of either a petition for writ of mandate or writ of prohibition is not a matter of absolute right but is a matter which is addressed to the discretion of the court. See, *Fawkes v. Burbank*, 188 Cal. 399, 401 (mandamus); *First Nat. T. & S. Bank v. Superior Court*, 19 Cal.2d 409, 414 (prohibition).

In California, as in all jurisdictions, there are many rules concerning the issuance of extraordinary writs.

Two of the most relevant rules in the present case are as follows: First, petitioner would have a remedy by way of appeal from the judgment of conviction, if convicted. Second, the Court could deny a subsequent petition on the ground that the matters have been raised in a prior petition. Cf. *In re De La Roi*, 28 Cal.2d 264, 275 (habeas corpus).

The exercise of a Court's discretion in determining the applicability of these various policy rules for the issuance of an extraordinary writ involves no federal question. The possible denial on such grounds negates the assertion that the case was determined on the constitutional ground.

II.

THE PETITION FOR WRIT OF CERTIORARI PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

Due process does not require—Federal procedure does not require—pretrial identification of witnesses; the California law represented by the two decisions of the District Court of Appeal goes well beyond the requirements of due process. In the prior decision rendered in this matter, *Castiel v. Superior Court*, 162 Cal.App.2d. 710, the District Court of Appeal required disclosure of the identity of the informer prior to a second trial of Castiel. It is conceded that the prosecution complied with this ruling. All information concerning the name and address of the informer was divulged to the defendant. The District Court by the denial of the petition for writ of prohibition and petition for writ of mandate has indicated that the prosecution has complied with its order.

The law of California, as represented by this case, goes far beyond the requirements of due process. Due process does not require pretrial identification of informers or, indeed, pretrial disclosure of the prosecution's case. See *Palermo v. U. S.*, 360 U.S. 343 (1959); *Rosenberg v. U. S.*, 360 U.S. 367 (1959); *Pittsburg Plate Glass Co. v. U. S.*, 360 U.S. 395 (1959).

The federal procedure does not require pretrial cooperation with a defendant except in limited situations and indeed Congress has recently reaffirmed the common law rule concerning pretrial discovery. See 18 U.S.C., section 3500. The denial of pretrial discovery in a criminal case involves no due process question. Such was the rule in common law, such is the overwhelming rule in the majority of Courts, and such is the rule as reaffirmed by Congress and this Court.

It has been the long-established, general rule and the rule applicable in federal Courts that the prosecution need not furnish the *names of witnesses* or the evidence upon which it will rely at the trial. *Palermo v. U. S.*, supra. See *Wong Tai v. U. S.*, 273 U.S. 77, at 82 (1929); *U. S. v. Lavery*, 101 Fed.Supp. 283, 287.

Certainly it thus follows that the prosecution having given all information to the defendant concerning the name and address of the informant has done all that is required by state law and more than is required by due process. Neither state law nor due process requires the prosecution to actively seek out or locate witnesses which the defendant desires to interview.

The contention that the prosecutor has denied Castiel due process by deliberately withholding this information is without factual or legal foundation. The prosecution, prior to the decision in *Castiel v. Superior Court,* 162 Cal.App.2d 710, did refuse to give the name and address of the informer prior to the trial. The prosecution relied on the then existing status of the California law. The fact that the California Appellate Court changed the law does not convert the prosecution's good faith reliance on precedent and the doctrine of *stare decisis* into a malicious conspiracy. The prosecution has divulged to the defendant all information in its possession concerning the name and various addresses of the informant. No more can be required by due process. No more can be reasonably required of the prosecution.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be denied.

Dated, San Francisco, California,
January 25, 1960.

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